

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

WALTER L. RHONE,)	
)	
Plaintiff,)	
)	
v.)	CV 03-B-1952-S
)	
P. HUFFSTUTLER, Deputy, et. al.,)	
)	
Defendants.)	

MEMORANDUM OF OPINION

This is a civil action pursuant to 42 U.S.C. § 1983 filed by plaintiff, Walter L. Rhone. In his *pro se* complaint, plaintiff names Deputy Huffstutler, Deputy Hopper, Deputy Nabors, Deputy Burton, and Deputy Morrow as defendants. He contends the defendants violated his constitutional right to be free from cruel and unusual punishment by subjecting him to excessive force. As compensation for the alleged constitutional violation, plaintiff seeks monetary relief.

On January 13, 2005, the magistrate judge entered a report and recommendation, recommending that summary judgment be granted in part and denied in part as to the above named defendants. On February 4, 2005, defendants filed objections.

Having carefully reviewed and considered *de novo* all the materials in the file, including the report and recommendation and the objections thereto, the Court is of

the opinion that the magistrate judge's findings of fact and conclusions of law are due to be and are hereby **ADOPTED** and his recommendation is **ACCEPTED**. The Court finds that defendants' motion for summary judgment is due to be **GRANTED IN PART** and **DENIED IN PART** as follows:

1. The Court **EXPRESSLY FINDS** that there are no genuine issues of material fact with regard to plaintiff's claim that defendants' actions violated any constitutional right in their official capacities. Therefore, defendants' motion for summary judgment is due to be **GRANTED** to the extent they are sued in their official capacities, and all claims against all defendants in their official capacities are due to be **DISMISSED WITH PREJUDICE**.

2. The Court **EXPRESSLY FINDS** that there are no genuine issues of material fact with regard to plaintiff's claim that defendants' actions violated his Fourteenth Amendment right to due process of law. As such, defendants' motion for summary judgment is due to be **GRANTED** and the Fourteenth Amendment claims against defendants in their individual capacities are due to be **DISMISSED WITH PREJUDICE**.

3. The Court **EXPRESSLY FINDS** that there are genuine issues of material fact with regard to plaintiff's claim that defendants' actions, in their individual

capacities, violated his Eighth Amendment right to be free from excessive force. As such, defendants' motion for summary judgment is due to be **DENIED**.

An appropriate order will be entered.

DATED this 17th day of February, 2005.

A handwritten signature in black ink, reading "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

SHARON LOVELACE BLACKBURN
UNITED STATES DISTRICT JUDGE